



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149572

PRELIMINARY RECITALS

Pursuant to a petition filed May 24, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that Petitioner was overissued FoodShare benefits between January 1, 2012 and December 13, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Interpreter: [REDACTED]

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Nikita Howse

Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's Household size is 4, and includes his wife and two children. However, Petitioner's wife is excluded from Petitioner's Food Group, because she is ineligible for benefits due to citizenship issues. (Testimony of Petitioner and Ms. Howse)
3. There are no elderly, blind or disabled members in Petitioner's house hold. (Testimony of Petitioner)

4. On December 7, 2011, Petitioner completed an application for FoodShare benefits, indicating that he was working for [REDACTED]. In the application, Petitioner indicated that he worked 42.35 regular hours per week at \$13.50 per hour and 3.58 overtime hours per week at \$6.75 per hour. (Exhibit 3, pgs. 3-19)
5. On December 7, 2011, Petitioner also indicated that he had been laid off temporarily and, on January 9, 2012, submitted verification of his lay off. (Exhibit 3, pgs. 13 and 20)
6. On January 10, 2012, the agency sent Petitioner a notice indicating that he was approved for FoodShare benefits in the amount of \$526.00 per month. The notice further indicated that the agency did not have any income on file for his household. (Exhibit 3, pgs. 21-25)
7. On February 6, 2012, Petitioner contacted the agency to report his receipt of unemployment insurance benefits (UIB). (Exhibit 3, pg. 13)
8. For reasons not clearly stated in the record, Petitioner's FoodShare benefits were terminated/closed in July 2012. (Testimony of Ms. Howze)
9. In June 2012, Petitioner's eldest child turned 18. (Exhibit 3, pg. 10) As of the second quarter of 2012 she was employed. (Exhibit 3, pg. 79)
10. On July 16, 2012, Petitioner completed a new application for FoodShare benefits indicating no one in the household had any income. (Exhibit 3, pgs. 26-41)
11. Petitioner was injured on the job and was unable to work between July 1, 2012 and September 15, 2012. His last paycheck in July was dated July 6, 2012. (Testimony of Petitioner; Exhibit 2, pg. 4; Exhibit 3, pg. 73)
12. On July 18, 2012, the agency sent Petitioner a notice of action indicating that he was approved for benefits in the amount of \$271.00 for July 2012 and \$526.00 per month, thereafter. The notice indicated that the agency did not have any income on file for the household. (Exhibit 3, pgs. 42-47)
13. On January 24, 2013, Petitioner completed a six-month report form in which he indicated that there was no household income. (Exhibit 3, pgs. 48-53)
14. On January 25, 2013, the agency sent Petitioner a notice that he would be receiving FoodShare benefits in the amount of \$135 for January and \$526.00 per month for February and thereafter. The notice indicated that the agency had no income on file for the household. (Exhibit 3, pgs. 54-60)
15. On May 3, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating he was overpaid FoodShare benefits in the amount of \$3939 for the period of January 1, 2012 and December 31, 2012. (Exhibit 3, pgs. 85-95)
16. On that same date, the agency sent Petitioner a second Notification of FoodShare Overissuance, Claim number [REDACTED], indicating he had been overpaid FoodShare benefits in the amount of \$808.00 for the period of 01/24/2013 and 04/30/2013. (Exhibit 3, pgs. 96-102)
17. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 24, 2013. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must

then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In the case at hand, the Petitioner did not dispute the fact that he received the FoodShare benefits in question, but he disagrees with the agency's contention that he received them in error.

January 2012 through June 2012

At the time Petitioner applied for benefits on December 7, 2012, he was not receiving any unemployment benefits. (See Exhibit 3, pgs. 75) Petitioner was given a layoff notice from his employer, indicating his last day of work was December 2, 2011. Petitioner did not work during the pay period 12/3/11 to 12/9/2011 and therefore, did not receive a paycheck on December 16, 2011. (See Exhibit 3, pg. 73) Thus, at the time Petitioner applied, he provided correct information.

After reviewing the December 7, 2011 application, I see no reporting requirements concerning changes in income that occur between the date of application and the date of approval. The first notice Petitioner received of reporting requirements was in the notice sent on January 10, 2012, which indicated that he needed to report when his income exceeds \$2,422.00 by the tenth of the following month. These instructions are consistent with FoodShare Wisconsin Handbook (FSH) §6.1.1.2 which describes the reporting requirements for households, like Petitioner's, that do not have elderly, blind or disabled members:

“All other food units are only required to report if their total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL. As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as ‘Reduced Reporting’ requirements.”

See also 7 CFR 273.12 and the accepted proposed decision in case FOP/137829

In January 2012, 130% of FPL for a household of four was \$2,422. *FSH §8.1.1.1* In January 2012, Petitioner received \$1600 in UIB benefits and \$1020.50 in earned income. Consequently, Petitioner's total income for January 2012 was \$2620.50. This put the household income over the 130% FPL threshold. Thus, Petitioner needed to report this increase in income by February 10, 2011.

Although, Petitioner did correctly report his receipt of unemployment income by February 6, 2012, he did not report his earned income. Consequently, an overpayment occurred. However, because Petitioner was not obligated to report the change in income until February 10, 2012, his FoodShare benefits would not have been affected until March 2012. Thus, the overpayment period should begin in March 2012, not January 2012.

Petitioner's FoodShare was closed effective July 1, 2012, as such, the first overpayment period should end June 30, 2012.

July 2012 through December 2012

Petitioner filed a new application for FoodShare benefits on July 16, 2012. At the time Petitioner filled out his application, he was not receiving any UIB benefits and he had no earned income, because he could not work due to an injury. Indeed, his last paycheck from his employer was dated July 6, 2012. (See Exhibit 3, pg. 73) Thus, Petitioner was not necessarily dishonest about his own income, at the time the application was completed. However, Petitioner's daughter earned income during the second quarter (April, May, June) of 2012.

All income from the food unit/household must be included in determining FoodShare eligibility. *FSH §4.3.1* see also *7 CFR §273.9(a)*. A food unit is defined as, “one or more persons who live in the same household and purchase and prepare food together for home consumption. This group is tested for eligibility together...” *FSH*

§3.3.1.1 With regard to children, only income from those 17 years and under may be excluded from food unit/household income:

4.3.2.2 Disregarded Earned Income

“Disregard” means “do not count.” When you are calculating the total amount of income a person has received, you should exempt or exclude any of the following kinds of income:

Disregard the following sources of income:

3. Earned income of any person 17 years or younger, who is a food unit member under parental control of an adult food unit member and is enrolled in an elementary, high school, technical school, or university. This includes GED classes, and home schools recognized or supervised by the state or local board of education. Disregard the income until the month following the month in which the person turns 18 years of age. These provisions apply to semester and vacation breaks provided the student plans to return to school following the break.

Petitioner’s eldest child turned 18 on June 9, 2012. As such, her income would begin to be counted as of July 1, 2012. According to the State Wage Record, this child earned a total of \$2057.12 for the second quarter of 2012 (April, May, June), which averages out to be \$685.71 per month ($\$2057.12 \div 3$ months). Thus, Petitioner did err, by failing to include his daughter’s income on his application for benefits in July 2012.

I do note, that the agency incorrectly calculated Petitioner’s overpayment for July 2012. Based upon conditions at the time of Petitioner’s new application, his prospective income for July 2012 should have been \$685.71, not the \$1196.72 amount indicated in the overpayment worksheets.

For August 2012, the agency correctly noted Petitioner’s total household income to be \$228.37, based upon the State Wage Records for Petitioner’s daughter ($\$684.13$ total third quarter earnings $\div 3$ months).

Petitioner began working again in September 2012, but his income did not put his household over the 130% threshold. In September 2012, Petitioner earned a total of \$563.45. If you add this to his daughter’s income of \$228.37, the total household income was: \$791.82. Petitioner’s household income did not go over the 130% threshold, so his income did not have to be reported, per *FSH* §6.1.1.2. Thus, the agency erred in its calculation of the September 2012 overpayment. That overpayment should be based upon an income of \$228.37 only.

In October 2012, Petitioner’s daughter earned \$171.32 during the fourth quarter of 2012 (October/November/December), which works out to be \$57.10 per month ($\$171.32 \div 3$ months). Petitioner earned \$3364.56 in October 2012. This clearly put the household well over the 130% reporting threshold of \$2498, in effect as of October 1, 2012. See *FSH* §8.1.1.1 As such, Petitioner needed to report this increase in income by November 10, 2012, which would in turn, affect benefits for December 2012. *FSH* §6.1.1.2

Thus, the overpayment calculation for October 2012 and November 2012 should have been based solely upon income from Petitioner’s daughter, in the amount of \$57.10 per month.

In summary, the overpayment calculations for August, September, October and November, 2012, should be based only upon the income of Petitioner’s eldest child.

January 24, 2013 to April 30, 2013

Petitioner completed a six-month report form on January 24, 2013 and reported no household income, even though he had received paychecks that month for a small amount of hours worked. Had petitioner correctly reported his income, the FoodShare benefits he received would have been reduced.

In February 2013, Petitioner began receiving UIB benefits again and received a total of \$2300 in benefits, a portion of which consisted of backdated benefits for January 2013. (See Exhibit 3, pg. 78) Per *FSH* §4.5.5,

retroactive unemployment benefits are to be counted as an asset, not as income. The UIB checks that Petitioner received on February 4, 2013 were retroactive benefits, covering weeks 1-4 2013, in the amounts of \$323, \$311, \$363 and \$327. Petitioner's UIB benefits became current with the February 5, 2013 check, which covered week 5 of 2013. Thus, per FSH§4.5.5 the unemployment checks that Petitioner received on February 4, 2013 should not have been counted as income. Petitioner's counted unearned income from UIB should have been \$976 (\$2300-\$323-\$311-\$363-\$327)

Petitioner's earned income in February 2013 was \$653.51. There is no indication in the record that Petitioner's eldest child was working at this time. As such, his total household income for February 2013 was \$1629.51 (\$976 counted UIB + \$653.51 earned income). This did not put the household over the 130% reporting threshold of \$2498. Accordingly, per FSH §6.1.1.2, Petitioner was not required to report his receipt of unemployment income. Thus, the overpayment for February 2013 should be based upon Petitioner's earned income only.

Petitioner's benefits for March 2013 and April should also be based solely upon Petitioner's earned income, because even if Petitioner's income went over the 130% threshold in March 2013, he would not have had to report the addition of UIB payments until April 10, 2013, and that would not have affected his benefits until May 2013.

Based upon the foregoing, only Petitioner's earned income should be counted for the January, February March and April 2013 overpayments.

Based upon all of the above, the agency will have to issue new overpayment notices, one from March 1, 2012 to June 30, 2012, one from July 2012 through December 31, 2012 and a third from January 24, 2013 to April 30, 2013 to reflect corrected overpayment periods and calculations. If Petitioner wishes to contest the new calculations he will have to file a new appeal.

If the agency sends new overpayment notices to Petitioner's wife and daughter, they will EACH have to file new appeals.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was over-issued FoodShare benefits due to client error.

The agency's calculation of the overpayment amounts are not correct.

THEREFORE, it is

ORDERED

That the agency amend Claim Number [REDACTED] to reflect the correct overpayment period of March 2012 through June 2012.

The agency shall also issue a new Notification of FoodShare Overissuance with an overpayment period of July 2012 through December 2012. The agency shall also recalculate the overpayment for that period, using the correct income calculation for July 2012 of \$685.71. With regard to the overpayment calculations for August 2012 through November 2012, the agency shall recalculate the overpayments counting only the income of Petitioner's eldest child.

It is further ordered that the agency amended Claim Number [REDACTED] to reflect a corrected overpayment amount. The agency shall recalculate the overpayments for January 2013 through April 2013, counting only Petitioner's earned income.

The agency shall take all administrative steps necessary to complete all of these tasks within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

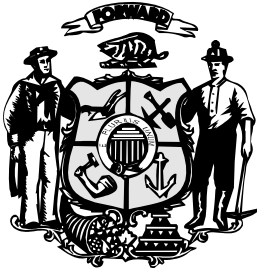
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of July, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 5, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability